THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16593 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the sale certificate dated 7.6.2006, issued by the 1st respondent-Bank in favour of respondents 4 to 8 is arbitrary and illegal.

The facts, which are not in dispute, are as under:

The 2nd respondent herein, availed an aggregate financial assistance of Rs.300 lakhs from the 1st respondent-Bank on 18.2.2003. The factory, land and building, apart from machinery belonging to the 2nd respondent-company were extended as primary security for the loan availed by it. Apart from that, immovable property belonging to petitioners 1 and 2 were also offered as collateral security. The 3rd petitioner was a member of Board of Directors of the 2nd respondent-Bank.

The 2nd respondent-company failed to discharge the loan availed and, consequently, on 28.2.2005, the loan account was classified as non-performance account. Thereafter, having invoked the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), the 1st respondent-Bank issued a notice under Section 13(2) of the Act, calling upon the 2nd respondent-company, represented by its Directors as well as the petitioners herein, and other guarantors jointly and severally to discharge in full the loan amounting to Rs.3,33,31,962-93 ps with further interest at the rate of 14.82% per annum from 1.3.2005, within 60 days, failing which, steps will be taken for recovery of the said amount by proceeding against the secured assets. The details of the property mortgaged in favour of the 1st respondent-Bank were furnished in detail in the said notice.

It is alleged by the petitioners that subsequently they were not

informed of the measures initiated under Section 13(4) of the Act, but it appears that possession notice was issued on 25.5.2005 by the 1st respondent-Bank and on receipt of the same, the 2nd respondent-company filed S.A.No.119 of 2005 in the Debts Recovery Tribunal, Hyderabad, under Section 17(1) of the Act. Having entertained the same, the Tribunal granted stay of further proceedings, pursuant to the notices dated 21.3.2005 and 25.5.2005 until further orders, which is still pending. While so, the 1st respondent-Bank published possession notice dated 30.7.2005 in respect of the property belonging to petitioners 1 and 2 and subsequently, an Advocate-Commissioner was also appointed vide orders in Crl.M.P.No.2806 of 2005 on the file of the Court of the Chief Metropolitan Magistrate, Hyderabad, under Section 14(2) of the Act. Aggrieved by the same, petitioners 1 and 2 filed S.A.No.147 of 2005 in the Debts Recovery Tribunal, Hyderabad, under Section 17(1) of the Act. It was alleged before the Tribunal that the impugned possession notice was not in conformity with the provisions of Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules") and that the entire action of the 1st respondent-Bank was illegal. The Tribunal after notice to the 1st respondent-Bank and after hearing both parties, by order dated 17.1.2006 dismissed S.A.No.147 of 2005, rejecting all the allegations made by the petitioners. Aggrieved by the same, the petitioners preferred an appeal before the Debts Recovery Appellate Tribunal, Chennai. The Appellate Tribunal, by order dated 20.1.2006 in I.A.No.54 of 2006 in(SARFAESI) 21 of 2006, granted interim stay of all further proceedings on condition that the petitioners should deposit 25% of the outstanding loan amount of Rs.3,33,31.962.93 ps with the 1st respondent-Bank on or before 28.2.2006.

Admittedly, the petitioners did not comply with the said condition and, consequently, 1st respondent-Bank issued a fresh auction notice dated 29.3.2006 and, accordingly, the properties in question were sold on 13.4.2006.

The respondents 4 to 8 herein are the auction purchasers in whose favour sale certificate was issued by the 1st respondent-Bank on 7.6.2006, and the same was also registered with the 3rd respondent. Thereafter, on 7.8.2006, this writ petition has been filed contending *inter alia,* that possession notice dated 30.7.2005 itself was void and unenforceable; and that the action of the 1st respondent-Bank in splitting secured assets for initiating the measures under Section 13(4) of the Act is arbitrary and contrary to law.

At the outset, it is to be noted that S.A.No.147 of 2005 filed by the petitioner under Section 17(1) of the Act, challenging the very same possession notice dated 30.7.2005 was dismissed by the Debts Recovery Tribunal, Hyderabad by order dated 17.1.2006. Though the petitioners had availed the statutory remedy of appeal before the Debts Recovery Appellate Tribunal, Chennai, admittedly, they failed to comply with the conditional order dated 20.1.2006 and, consequently, the appeal stood dismissed. Thus, the order of the Tribunal dated 17.1.2006 upholding the possession notice has become final, and it is not open to the petitioners to re-canvass the correctness of the proceedings under Section 13(2) and 13(4) of the Act.

However, the learned counsel for the petitioners vehemently contended that the sale, pursuant to the auction notice dated 29.3.2006, was not in conformity with Rule 8 of the Rules and, consequently, the sale dated 13.4.2006 is vitiated and liable to be set aside. It is contended by the learned counsel that since the petitioners had already availed the remedy under Section 17 of the Act, no alternative remedy is available to them questioning the sale proceedings, except invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

I am unable to agree with the said contention. On the fact of it, the alleged irregularities in the sale proceedings involved several disputed questions of fact, which cannot be enquired into at this stage by this Court in a writ proceeding. At any rate, since the order of the

Debts Recovery Tribunal dated 17.1.2006 upholding the proceedings under Section 13(4) and Section 14 of the Act has become final, this writ petition is misconceived and the relief as prayed for cannot be granted.

Accordingly, the writ petition is dismissed. No costs. Needless to mention that the interim order granted earlier shall stand vacated.

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(G. ROHINI, J.)

10th November, 2006.

Note: Issue CC by Monday

(B.O.)

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.16593 OF 2006

10th November, 2006.

Between:

Smt. Lalitha Gupta and others. .. Petitioners.

And

Punjab & Sind Bank, Abid Road Branch,
Abids, Hyderabad, represented by its
Chief Manager & Authorised Officer and
others. .. Respondents.

10th November, 2006.